IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

CRP.No. 2327 of 2002

AGAINST THE ORDER DATED 04/01/2002 IN E.P.NO.222/2001 IN OS.500/1999
OF I ADDITIONAL MUNSIFF'S COURT,NEYYATTINKARA

REVN. PETITIONER: DECREE HOLDER

PONNUMUTHEN NADAR RAJU, CHEENIVILA
VADAKKAYKARA PUTHEN VEEDU BENGLOW, KAZHUVOOR
DESOM, KANJIRAMKULAM VILLAGE.

BY ADV. SRI.P.R.VENKITESH

RESPONDENT: JUDGMENT DEBTOR:

RAMAN NADAR CHANDRAN, ANAMARAM VALICHA
CHANDRA BHAVAN, KANJIRAMKULAM DESOM,
-DO- VILLAGE.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

C.R.P. NO. 2327 OF 2002 B

Dated this the 23rd day of August, 2007

O R D E R

The decree holder is the revision petitioner. In execution of the decree for realisation of money, the decree holder filed E.P.No.222 of 2001. The prayer in the Execution Petition is to realise the decree debt by arrest and detention of the judgment debtor in civil prison. The judgment debtor pleaded no means. That contention was accepted by the court below and Execution Petition was dismissed.

2. Before the court below, the decree holder was examined as PW1 and the judgment debtor was examined as DW1. No documentary evidence was produced before the court below.

3. The case of the decree holder is that the judgment debtor has means to pay the decree debt and that he is deliberately refusing and neglecting to pay the same. It was contended that the judgment debtor gets income from sale of agricultural produces, sale of milk and from other business activities. The judgment debtor denied this case of the decree holder. The court below, on analysing the evidence, came to the conclusion that the decree holder has not proved by any independent

evidence that the judgment debtor has the means to pay the decree debt. The judgment debtor has not entered appearance in this Revision. The learned counsel for the petitioner submitted that the decree holder may be afforded an opportunity to prove that the judgment debtor has the means or has had since the date of decree the means to pay the decree debt. In the facts and circumstances of the case, I am of the view that the decree holder can be afforded an opportunity to produce documents and to adduce such other evidence to establish that the judgment debtor has the means. By affording an opportunity to the decree holder to prove the means of the judgment debtor, no prejudice would be caused to the judgment debtor. I am inclined to grant this opportunity to the decree holder in view of the fact that the decree holder has raised a contention that the wife of the judgment debtor has property of her own and that the daughter of the judgment debtor has also property in her own name. Though the property in the names of the wife and daughter of the judgment debtor would not be sufficient to prove the means of the judgment debtor, those facts would indicate that the judgment debtor is not living in utter poverty. If proper evidence is adduced and acceptable materials are produced, the court may be able to assess the situation correctly and to arrive at a conclusion as to whether the judgment debtor has the means or has had since the date of the decree the means to pay the decree debt.

4. For the aforesaid reasons, the order passed by the court below is set aside and the Execution Petition is remanded for fresh consideration in accordance with law. The decree holder and the judgment debtor shall be afforded a further opportunity to produce such other evidence to establish the respective case put forward by them.

The Civil Revision Petition is allowed as above.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

C.R.P.NO. 2327 OF 2002 B

O R D E R

23rd August, 2007